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RECENT DECISIONS

ATTORNEY AND CLIENT—DISBARMENT—PAYMENT AND CONDONEMENT.—An attorney received money from his client for the purpose of satisfying a judgment against the client. Instead of satisfying the judgment he converted the sum to his own use. After complaint had been made by the client, but before any hearing had been had, the attorney paid over to the client in full the amount received from him. *Held*, the attorney will be disbarred. *In re Flowerman*, 168 N. Y. Supp. 860.

The purpose of a disbarment proceeding is to exclude from the practice of law, persons who are unfit to be entrusted with the duties and responsibilities of an attorney. *Wernimont* v. *State*, 101 Ark. 210, 142 S. W. 194; *In re Lentz*, 65 N. J. L. 134, 46 Atl. 761, 50 L. R. A. 415. It is not a proceeding to punish the attorney for his misconduct, but it is a proceeding to protect the high standing of the bar, by striking from the roll of attorneys those who are unable or unfit to maintain its high standards. *State* v. *McRae*, 49 Fla. 389, 38 South. 605; *Wernimont* v. *State, supra.* Neither is it a suit to enforce a civil liability; and the fact that a civil liability was incurred, and has been sued on, and judgment obtained against the attorney thereon, constitutes no bar to the disbarment proceedings. *People* v. *Allen*, 244 Ill. 393, 91 N. E. 463.

So where an attorney embezzled his client's funds and was prosecuted criminally therefor, and afterwards settled with the client who consented to a *nolle prosequi*, it was held that this did not prevent disbarment of the attorney. *In re Davies*, 93 Pa. St. 116, 29 Am. Rep. 729. And where a statute provided that a lawyer, who withheld funds from

his client and wrongfully refused to pay over the same, should be suspended from practice by the court until the sum be paid, it was held that this was a remedy for the creditor and did not prevent proceeding for the disbarment of the attorney. *Commonwealth* v. *Roe*, 129 Ky. 650, 112 S. W. 683. Again, where a statute provided that no fine or forfeiture should be enforced after six months from the time of incurring it, and an attorney, guilty of misconduct, sought to interpose this statute in bar of disbarment proceedings, it was held that the statute had no application to disbarment proceedings. *State* v. *Walker*, 141 La. 464, 75 South. 207.

The present case is undoubtedly correct on reason and principle and is supported by authority, for though the payment by the attorney of the money wrongfully retained releases him from civil liability, it does not free him from blame for having committed the offense, nor does it rehabilitate him as a proper person to practice law. *In re Davies, supra.*

BANKRUPTCY—FRAUDULENT TRANSFER OF PROPERTY—SUMMARY PROCEEDINGS.—An insolvent formed a corporation, with near relatives as incorporators and nominal stockholders, for the purpose of withdrawing his property from the reach of his creditors. In the bankruptcy proceedings which followed, the trustee by summary order from the referee seized the property, and it was sought to bar the discharge of the bankrupt for his fraud. The right of the referee to enter such an order was denied on the ground that the corporation was an adverse claimant. *Held*, such a corporation is only a colorable holder for the insolvent and summary proceedings will lie, but discharge will not be barred, because there was no actual transfer of property. *Liller Bldg. Co.* v. *Reynolds* (C. C. A.), 247 Fed. 90.

It is settled that one who claims the right to the possession of property received from the bankrupt prior to his adjudication, whose claim is not merely fictitious or colorable, is an adverse claimant in possession, and his right to possession cannot be tried in a summary proceeding. *In re N. Y. Car Wheel Works*, 132 Fed. 203; *In re Kane*, 131 Fed. 386; *In re Teschmacher*, 127 Fed. 728. But where the goods are held by a person who is in reality the bankrupt in disguise, the bankruptcy court may take them into its custody by summary proceedings. *In re Franklin Suit and Skirt Co.*, 197 Fed. 591, 28 Am. B. R. 278. And the bankruptcy court has power to decide whether the claim is in fact well founded or whether it is fictitious. *In re Norris*, 177 Fed. 598, 24 Am. B. R. 444; *In re Rathman* (C. C. A.), 183 Fed. 913, 25 Am. B. R. 246. But it is impossible to declare a general rule which will determine in every case whether a person claiming a right or interest against the trustee is an adverse claimant. COLLIER, BANKRUPTCY, 10 ed. p. 477.

That a corporation is a legal entity apart from the natural persons who compose it, is a mere fiction of law, but like every other fiction, it may be disregarded when urged to an extent and purpose not within its reason and policy. *State* v. *Standard Oil Co.*, 49 Ohio St. 137, 30 N. E. 279, 15 L. R. A. 145, 34 Am. St. Rep. 541; *Bank* v. *Trebein Co.*, 59 Ohio St. 316, 52 N. E. 834; *In re Rieger*, 157 Fed. 609. Thus, where it